Petition

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No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM 1981

BASIC BIBLE CHURCH OF AMERICA, CHAPTER 8035,

Petitioner,

vs.

COUNTY OF HENNEPIN,

Respondent.

On Writ of Certiorari
To the Supreme Court of
the State of Minnesota

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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QUESTIONS PRESENTED

1. Whether the imposition of property tax by the State upon church-owned property used as a house of worship, parsonage, and church office violates the Church's First Amendment right to the free exercise of religion.

2. Whether the State's requirement that the Basic Bible Church of America, Chapter 8035, reveal its membership list violates the Church's First Amendment associational freedoms.

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JURISDICTION

The judgment sought to be reviewed is dated June 3, 1981, and was entered on June 3, 1981. The Court's jurisdiction is invoked under 28 USC 1257(3).

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[1]Douglas A. Page and Carolyn Page, as trustees for the Basic Bible Church of America, Chapter 8035, are the assignees of a vendee's interest under a contract for deed with the fee owner of the property. The Basic Bible Church of America, Chapter 8035, has the equitable use of the property.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution
Amendment 1.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Minnesota Constitution
Article X., Section 1.

> Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, but . . . churches, church property (and) houses of worship . . . shall be exempt from taxation except as provided in this section . . . The legislature by law may define or limit the property exempt under this section other than churches (and) houses of worship . . ..

Minnesota Statute 272.02 Subd. 1(5).

> Except as provided in divisions of this section or in Section 272.025, all property described in this section to the extent herein limited shall be exempt from taxation:
>
> * * *
>
> (5) all churches, church property and houses of worship . . ..

STATEMENT OF THE CASE

The Basic Bible Church of America chartered numerous chapters. These chapters were unincorporated. One such chapter, Chapter 8035, was led by the Reverend Douglas A. Page. The chapter procured real property to use as a church, church office, and house of worship. The property was financed by a contract for deed. The equitable title was held by Douglas A. Page and Carolyn Page, as trustees for the Basic Bible Church of America, Chapter 8035.

The parent church has been held an exempt organization under Internal Revenue Code Section 501(c)(3). The chapter adheres to all the precepts and organizational documents of the parent organization. It is part of the parent church, makes contributions to the parent church. receives a news letter from the parent church, and is subject to directives from the parent church.

Reverend Page is ordained as a minister, has filed his certificate of ministry with the State of Minnesota and Hennepin County and has received his minister's credentials from the County. The parent church issued a proclamation certifying that Reverend Page is a minister of the Basic Bible Church of America and a member of the Order of Almighty God, a religious order. It further prescribed the authority of Reverend Page as a minister and issued letters of instruction specifically detailing his duties.

Reverend Page was eventually ordained a Bishop in the parent church, and thereafter was ordained an Apostle for a special mission in the parent church.

Reverend Page works full time for the church and has done so since May of 1978. He receives a monthly stipend

of $250.00 per month from the church for his personal expenses. The church contracts with third parties for Reverend Page's services and those fees earned are paid directly to the church, as required by the doctrine of the church. Contributions of approximately $200.00 were received in the first seven months of the church's existence. Approximately one-half came from donations and one-half from sums left in the collection box at church services.

Reverend Page prepares sermons which are delivered to the congregation and which are printed and distributed. The church advertises its services once a month in local newspapers. The church distributes printed business cards, book markers with its name and address, religious tracts, certificates of baptism, certificates of marriage, certificates of appreciation, and similar items with the church name and letterhead embossed thereon.

It is operated by a board of three trustees. Trustees can be removed by the parent organization. The ministers of the chapters of the church conduct the day-to-day business of the chapter; a local board of trustees supervises the ministers; a Bishops' Council supervises the local Board of Trustees; apostles of the church consult with the Bishops' Council; the Board of Trustees of the parent organization supervises the Bishops' Council. All of these levels of administration function on an ongoing basis with frequent contacts with the local church.

The parent church has been in existence since 1974, and since that time has actively recruited new members, formulated doctrines, and encouraged people to join the church.

The church is widespread, having ministries number-

ing in the thousands throughout the continental United States. There are approximately 18 to 20 such ministries in the Minneapolis-St. Paul area. The Reverend Page does not belong to any other church, is unaware that any members of his church belong to another church, and ministers are forbidden to belong to any other church.

To become a minister of the church Reverend Page went through an initial period of recruitment during which he had long periods of discussion with members of the parent church to determine whether he would make a suitable minister. He joined the church in 1974, made the decision to become a minister in 1975, and undertook a course of study from 1975 through 1978 under the supervision of others in the church. He spent approximately four or five hours per week in study and training. He was given verbal examinations and was eventually ordained. The parent church did not have a seminary at the time he subscribed to the ministry; it has since established a seminary.

After achieving his ministry church services were held on the subject premises every Friday.

Reverend Page and his wife transferred all their property to the church, took an irrevocable vow of poverty, and church documents require that all property will upon dissolution of the church be transferred to other religious or charitable organizations and cannot be transferred back to the Pages as individuals.

Reverend Page made application for property tax exemption for 1978. The assessor refused to exempt the property. The Minnesota Tax Court after a trial likewise refused to exempt the property. On June 3, 1981, the judgment of the Tax Court was summarily affirmed by the Minnesota Supreme Court.

The question of freedom of religion was raised by petitioner's counsel on numerous occasions during the trial. The trial Court disposed of the issue by stating in the Memorandum attached to its Findings that:

> There is a final constitutional issue raised by petitioner that deserves comment. Bishop Page mistakenly equates his First Amendment rights of freedom of religion under the U.S. Constitution with the right to a tax exemption on his homestead. The freedoms guaranteed by the First Amendment are extended to him as an individual and prevent the government from unjustifiably interfering with his religious beliefs and practices. The First Amendment does not guarantee him any tax benefits. The property tax exemption under consideration is not extended to individuals but to churches. The petitioner must prove the existence of a group of people associated together for common religious purposes.
>
> * * *
>
> We do not pretend to decide whether Bishop and Mrs. Page come within any theological definition of a church. We reject, however, their contention that they, as individuals, come within the meaning of the word "church" as found in Minn. Stat. 272.02, Subd. 1(5) or Minnesota Constitution, Article X. Section 1.
>
> To hold otherwise would allow any person to declare himself to be a "church" and thereupon become a tax exempt institution. All property owned and used by him would instantaneously become exempt from property taxes and shift the cost of local government and public schools onto persons less ingenious than Archbishop Daly and his disciples and also onto those who continue their membership in more traditional churches.

> For the reasons stated the applicant's claim for property tax exemption is denied.

This question was further asserted on appeal. See Relator's Brief to the Minnesota Supreme Court, p. 25, wherein petitioners state

> The petitioners have come before this Court and presented a very strong case showing the exercise of their religion. . .. A bona fide First Amendment issue has been joined. The presentment of a prima facia case by the petitioner shifts the burden to the County of coming forward . . ..

The question of freedom of association was raised at the trial level. Pages 119 through 122 of the trial transcript are included in the appendix hereto, evidencing this issue. One of the reasons for denying exemption is clearly stated by the Court to be that "there is insufficient proof that the petitioner has any regular members or congregation . . .." Memorandum, p 6, App. p. 7.

It was further asserted in petitioner's brief to the Supreme Court of Minnesota at p. 30:

> To require the church to disclose its membership lists in such circumstances absent a showing of a compelling interest of the state violates rights of citizens to privacy in their associations and assembly secured by the First and Fourteenth Amendments of the U.S. Constitution.

The Supreme Court of Minnesota, by virtue of its summary disposition, did not address either issue.

ARGUMENT IN SUPPORT OF PETITION

1. The decision below conflicts with the decisions of Federal Courts of Appeal on a federal question.

One of the reasons the Tax Court relied upon in making the decision appealed from was lack of proof of membership in the Basic Bible Church, Chapter 8035. The petitioner refused to supply any membership lists on the grounds that to do so would violate the petitioner's First Amendment rights to associational freedoms. The requirement that it do so, expressed by the Tax Court and affirmed by the Minnesota Supreme Court, conflicts with numerous decisions of Federal courts. In *Baldwin v. Commissioner of Internal Revenue*, 648 F.2d 483 (1981), Baldwin, appearing pro se, brought a deficiency determination lawsuit which was dismissed by the U.S. Tax Court for failure to comply with Tax Court Orders requiring him to answer interrogatories requesting the names and addresses of all persons attending meetings of the Basic Bible Church, Chapter 7909. The Eighth Circuit overturned the Tax Court's decision, stating:

> The record reveals that Baldwin's claims of religious privilege in opposition to the Commissioner's discovery requests were not seriously considered.
>
> * * *
>
> . . . the underlying issue is . . . whether disclosure of certain information will infringe upon a church's First Amendment freedoms.
>
> * * *

See also *United States v. Life Science Church*, 636 F.2d 221 (8th Cir. 1980); *United States v. Holmes*, 614 F.2d 985 (5th Cir. 1980).

The *Baldwin* and *Life Science* cases illustrate the substantial disregard of constitutional protections frequently encountered in cases such as the instant case. The record reflects fully the conduct of the petitioner as a church. The Minnesota Supreme Court has failed to sustain the petitioner's constitutional rights with the same vigor as the Federal Circuit Courts. It might also be noted that at no point did the Federal Circuit Court in *Baldwin* discuss the issue of whether the Basic Bible Church, Chapter 7909, was or was not a church.

2. The decision below conflicts with that of the Supreme Court of the United States on a matter of federal law.

The Minnesota Tax Court found that the petitioner is not a "church" and that property owned by it is not exempt from taxation. This determination was not made on the basis of either a factual analysis test, or analogy test, or a sincerity of belief test. Rather, the Tax Court said:

> We do not pretend to decide whether Bishop and Mrs. Page come within any theological definition of a church. We reject, however, their contention that they, as individuals, come within the meaning of the word "church" as found in Minn. Stat. 272.02, Subd. 1(5) or Minnesota Constitution, Article X, Section 1.
>
> To hold otherwise would allow any person to declare himself to be a "church" and thereupon become a tax exempt institution. All property owned and used by him would instantaneously become exempt from property taxes and shift the cost of local government and public schools onto persons less in-

> genious than Archbishop Daly and his disciples and also onto those who continue their membership in more traditional churches.
>
> For the reasons stated the applicant's claim for property tax exemption is denied.

This Court has held that it is constitutional under the establishment clause to provide property tax exemption for churches and religious institutions. They neither advance nor inhibit the establishment of religion if applied equally. *Walz v. Tax Commissioner,* 397 U.S. 664 (1970). Unequal application occurs when tax exemptions are accorded some churches and not others.

It seems, as one commentator has suggested, that even though objective facts and circumstances have been stated, a subjective decision has been made based upon the "I know it when I see it and this isn't it" test, alluding to Justice Stewart's concurrence in *Jacobellis v. Ohio,* 378 U.S. 184, 197 (1964), dealing with pornography. Professor Harry Cox of the Harvard Divinity School, reprinted in L. Tribe, *American Constitutional Law,* sec. 14-6 at 827, n. 8, has recognized that this occurs too often:

> When (Courts) cannot avoid a decision (they have) turned to some vague "man-in-the-street" idea of what religion should be . . . But a man-in-the-street approach would surely have ruled out early Christianity, which seemed both subversive and atheistic to the religious Romans of the day. The truth is that one man's "bizarre cult" is another's true path to salvation, and the Bill of Rights was designed to safeguard minorities from the man-in-the-street's uncertain capacity for tolerance. . ..

The goal in cases of the instant sort is not to establish that a particular activity is not a church; rather it is to establish "that the beliefs asserted to be religious are not held in good faith by those asserting them, and that forms of religious organization were erected for the sole purpose of cloaking a secular enterprise with the legal protection of religion." *Founding Church of Scientology v. United States,* 409 F.2d 1146, 1162 (D.C. Cir.), *cert. denied,* 396 U.S. 963 (1969). See also *Valent v. Larson,* No. 80-1131, 80-1159 (8th Cir. Jan. 7, 1981)

An example of a Federal trial Court's handling of this issue is found in *Universal Life Church v. United States of America,* 372 F. Supp. 770 (1974). The District Court for the Eastern District of California reviewed the society's ordination of ministers, its granting of church charters and its issuance of honorary Doctor of Divinity certificates, which were very similar to the Basic Bible Church's, and upon the following facts reached the following conclusions:

> During the tax year in question, in accord with past practices, plantiff dispensed Honorary Doctor of Divinity certificates upon mail order requests. Included was a twelve, later a ten, lesson packet which was mailed out for a suggested free will offering of $20.00. Those who could not afford $20.00 were provided with the lessons and certificates free. A flyer was disseminated indicating plaintiff had set up this twelve lesson plan.
>
> > If you receive these twelve lessons, one a week for twelve weeks, at the end of twelve weeks you will receive from the church an honorary Doctor of Divinity degree.

In actual practice, the lessons and the Honorary Doctor of Divinity certificate were dispensed simultaneously.

Plaintiff has stated these lesson plans are a basic, simple course of instruction in the principles of the church. No prior knowledge of the background of recipients was required. Issuance of the Honorary Doctor of Divinity certificate was based upon a good faith completion of the lesson plans. No testing or other verification was required.

Plaintiff ordained anyone for life gratis (upon request). Free will offerings were given but were never required as a condition of the issuance of minister's credentials.

Requests for ministers credentials were largely mail order requests. Ministers' credentials were distributed by mail, at college rallies, and at other public meetings. For example, at one rally 3,000 were distributed.

Church charters were granted upon request, largely by mail.

* * *

The Court must then address itself to the defendant's second conclusion: that the ordination of ministers, the granting of church charters, and the issuance of Honorary Doctor of Divinity certificates by plaintiff are substantial activities which do not further any religious purpose. Certainly the ordination of ministers and the chartering of churches are accepted activities of religious organizations. The defendant impliedly admits the same on page 5 of its Memorandum in support of its Requested Instructions. The fact that the plaintiff distributed ministers' credentials and Honorary Doctor if Divinity certificates is of no moment. Such activity may be analogized to mass conversions at a typical revival or religious crusade. Neither this Court, nor any branch of this government, will con-

> sider the merits or fallacies of a religion. Nor will the Court compare the beliefs, dogmas, and practices of a newly organized religion with those of another, more established religion. Nor will the Court praise or condemn a religion, however excellent or fanatical or preposterous it may seem. Were the Court to do so, it would impinge upon the guarantees of the First Amendment.
>
> In short, the court merely finds that the plaintiff's ordination of ministers, its granting of church charters, and its issuance of Honorary Doctor of Divinity certificates are not substantial activities which do not further any religious purpose.
>
> Furthermore, the facts outlined *supra* reveal that the plaintiff requested, but did not require, free will offering in performance of these activities.
>
> It is therefore ordered that the plaintiff be and is entitled to a federal tax exemption and to a refund of all monies levied against by the defendant with interest thereon from the date of levy, March 19, 1970.

The Minnesota Supreme Court has, since deciding the instant case, adopted a "factual analysis" test to determine whether a property is owned by a "church". Justice Wahl, in a sensitive opinion, concurred with the result but disagreed with the test used:

> The Tax Court adopted an eight-factor test based on the criteria developed by the Internal Revenue Service for use in determining whether an organization is a church. Both the IRS and the Tax Court have said that an organization need not meet all the criteria. Some widely recognized religious bodies not only do not meet all, but do not meet many, of the criteria, e.g., Quakers and Christian Scientists. Worthing,

supra, at 344-45 & n. 175. Neither this Court's majority nor any other Court has stated how few or how many of the criteria a group must meet in order to qualify as a church. It is important to note also that these criteria require an organization to be a developed denomination with patterns similar to those reflected in mainline churches and do not recognize denominations which deviate substantially. Furthermore, it may not be wise to define churches based on their developed states, since it is the early developing church that is most in need of constitutional protection. Worthing, *supra*, at 345.

Some Courts have used analogies instead of strict definitions to find that groups were religious because their activities were similar to those of traditional churches. *Washington Ethical Society v. District of Columbia*, 249 F.2d 127 (1957); *Fellowship of Humanity v. County of Alameda*, 153 Cal. App. 2d 673, 315 P.2d 394 (1957). In some cases, the beliefs were found to be "religious" because they held "parallel positions in the lives of their respective holders." *Seeger*, 380 U.S. at 166. It is one thing to conclude, by analogy, that an organization or group of ideas is religious. It is quite a different thing to elucidate precisely what indicia are to be examined in making and justifying the analogy. *Malnak*, 592 F.2d at 207 (Adams, J., concurring).

The majority has not used analogies in examining the Ideal Life Church; it has used defined criteria instead. While the result in this case is not wrong, based on the insincerity of belief of the members of the use of the Rossow home as a home just as it was used before incorporation of the church, the factors used are unduly restrictive and traditional. I cannot agree that such a test is appropriate for use in protecting the important constitutional liberty of freedom of religion.

Ideal Life Church of Lake Elmo v. County of Washington, Minn. Supr. Court Case No. ——, Finance and Commerce (3/13/81).

The "analogy" test and the "factual analysis" test are inadequate for the reasons stated. The "man-in-the-street" test is even less desirable, as it gives license to adopt any criteria that the intolerant may imagine, as the expressed fear in the instant case of a flood of instant tax exempt institutions, a distaste for the "ingenious . . . Archbishop Daly and his disciples," and sympathy or protection for "those who continue their membership in more traditional churches".

The result of such tests is that unequal treatment is accorded citizens, as demonstrated in the *Baldwin* case, infra., for the reason that unfounded presumptions, bias and personal religious prejudices are accorded far more weight than sound constitutional dictates.

CONCLUSION

The Tax Court addressed the issue of whether or not the petitioner is a Church. In doing so it used a "man-in-the-street" approach to determine whether this organization was or was not a "church". The federal Courts, including this Court, have said on numerous occasions that to praise or condemn any one religion is a violation of the First Amendment. The proper test to be applied is a sincerity of belief test, which disregards the specific nature of the beliefs in question, and which has been adopted by this Court.

In making its decision the Court placed weight on the refusal of the church to reveal its membership lists. This requirement under these circumstances violates the First Amendment rights of the church.

For the reasons stated a Writ of Certiorari should issue to review the judgment and opinion of the Minnesota Supreme Court.

Respectfully submitted,

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APPENDIX

STATE OF MINNESOTA
County of Hennepin

TAX COURT
Regular Division

Basic Bible Church of America, Chapter 8035,
Petitioner,

vs

County of Hennepin,
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

The above matter having been duly filed with the Minnesota Tax Court, came on for hearing on the 28th day of January, 1980 at Hennepin County Government Center before Judge Earl B. Gustafson and submitted on post-trial briefs on March 13, 1980.

Joseph L. Mannikko of Oberg & Mannikko appeared for petitioner and Donald J. Lalor, Assistant Hennepin County Attorney, appeared for respondent.

The Court, having heard and considered the evidence adduced, having viewed the subject property and being fully advised now makes the following:

FINDINGS OF FACT

1. Petitioner is Basic Bible Church of America, Chapter 8035.

2. Petitioner is not organized as either a religious association or as a non-profit corporation under the laws of the State of Minnesota.

3. Petitioner claims to be the owner of a residence at 15817 Valley View Road in the City of Eden Prairie, County of Hennepin with a legal description as follows:

> The East 312 feet of the West 520.5 feet of the North 416 feet of the NW¼ of the NW¼ of the SE¼ of Section 9, Township 116, Range 22.

4. Petitioner claims the subject property is exempt from real estate taxes under Minn. Stat. 272.02, Subd. 1(5) and Article X, Section 1 of the Minnesota Constitution as a church and/or a house of worship, parsonage and church office.

5. The subject property is not owned by petitioner.

6. The subject property is not used primarily for religious or church purposes.

7. The petitioner does not come within the meaning of the word "church" in Minn. Stat. 272.02, Subd. 1(5) or Article X, Section 1, Minnesota Constitution.

CONCLUSIONS OF LAW

1. The subject property is not owned by a church.

2. The subject property is not being used primarily for religious or church purposes.

3. The subject property is not entitled to exemption from real estate taxes under Minn. Stat. 272.02, Subd. 1(5) or under the Minnesota Constitution.

4. The action of respondent, Hennepin County, in denying petitioner's application for tax exempt classification is affirmed and the petition herein is dismissed.

5. The attached Memorandum is made a part of these Findings of Fact and Conclusions of Law.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

By the Court

/s/ EARL B. GUSTAFSON
Judge of Tax Court

Dated: April 21, 1980.

MEMORANDUM

The petitioner, Basic Bible Church of America, Chapter 8035, claims to be owner of a residence at 15817 Valley View Road in the City of Eden Prairie, County of Hennepin and further claims this property is exempt from real estate taxes because it qualifies as a house of worship, parsonage and church office. Its application for tax exemption was denied by Hennepin County and this appeal resulted.

The property has the outward appearance of a two-level suburban home and at all times has been occupied by Mr. and Mrs. Douglas A. Page and their children. The Page's are purchasing the property under a contract for deed. Mr. Page is a mechanical engineer. On May 5, 1978 he was issued an Ordination Certificate and a Doctor of Divinity degree by the Basic Bible Church of America. Four months later he was elevated to the office of

Bishop. These and other copyrighted documents were signed by Jerome Daly, D.D., Archbishop, President of the Basic Bible Church of America and Chief of the Order of Almighty God. Jerome Daly is designated in other documents as "Pope" and is the undisputed founder and leader of the parent church, Basic Bible Church of America, sometimes known as the Church of Jerome Daly, with offices in Bloomington, Minnesota. Daly is a lawyer no longer permitted to practice in Minnesota.

Bishop Page has done more than merely receive certificates and documents from Archbishop Daly. He has attached a 12" x 18" bronze plaque to the outside basement wall of his home which has raised letters reading, "Basic Bible Church of America, Chapter 8035." He regularly advertises in the church directory section of the local newspaper and has converted his basement recreation room into a church meeting room by bringing in two church pews and covering the pool table with a floor length blue cloth. There are religious pictures on the wall. Four of his printed sermons were offered and received in evidence along with a sample of the church's printed letterhead. Marriage certificates, baptismal certificates and various pamphlets and tracts have been purchased with church funds.

We need not concern ourselves with the tax status of the parent church because no claim can be sustained that Chapter 8035 derives any direct tax exemption through its parent organization. In this case the Charter is specific that, "No property (of Chapter 8035) will become the property of the parent church" and that, "this Auxiliary Chartered Church is not under the management, direction or control of the parent church." The Basic Bible

Church of America, Chapter 8035 therefore stands alone in its claim for exemption.

All property in Minnesota is presumed taxable unless specifically exempt by law, Minn. Stat. 272.01, Subd. 1; *Christian Business Men's Committee of Minneapolis, Inc., v. State,* 228 Minn. 549, 554, 38 N.W.2d 803, 808 (1949); *Camping and Education Foundation v. State,* 282 Minn. 245, 164 N.W.2d 369 (1969). Exemptions from taxation are strictly contrued and to be granted only when some public purpose is being served and not merely for the benefit of any particular persons or organization at the expense of taxpayers generally. *Christian Business Men's Committee of Minneapolis, Inc.,* supra; *Camping and Education Foundation,* supra; *State v. Board of Foreign Mission of Augustana Synod,* 221 Minn. 536, 22 N.W.2d 642 (1946).

The language granting a tax exemption to church property is found in both the Minnesota Constitution and Minnesota Statutes.

Article X, Section 1. of the revised Minnesota Constitution reads in relevant part as follows:

> All churches, church property, houses of worship. . . . shall be exempt from taxation except as provided in this section.

While the Minnesota Supreme Court has held that this constitutional provisions is self-executory, *State v. Board of Foreign Missions of Augustana Synod,* supra, the exemption is also expressed in Minn. Stat. Sec. 272.02, Subd. 1(5); which reads as follows:

> Except as provided in other subdivisions of this section or in section 272.025, all property described in

this section to the extent herein limited shall be exempt from taxation.

* * * * *

(5) All churches, church property, and houses of worship;

Neither the legislature nor the courts of this state have attempted to further define the word church. Because this is a case of property tax exemption, there must be a concurrence of ownership of the property by a "church" as that term is used in the exemption language, and a use of the property for the purpose for which the tax exemption was created. *Christian Business Men's Committee of Minneapolis, Inc. v. State*, 228 Minn. 549, 38 N.W. 2d 803 (1949).

Church property, to be exempt, must be used for the furtherance of religious worship and instruction. *State v. United Homes, Inc.*, 292 Minn. 302, 195 N.W.2d 411 (1972). Both church buildings and church parsonages have been held exempt by the Minnesota Supreme Court. *State v. Church of Incarnation*, 158 Minn. 48, 196 N.W. 802 (1924); *State v. Second Church of Christ Scientist*, 185 Minn. 242, 240 N.W. 532 (1932).

Property owned by a church but not used for church purposes would not be exempt. *State v. Union Congregational Church*, 173 Minn. 40, 216 N.W. 326 (1927).

In *State v. Union Congregational Church*, 173 Minn. 40, 216 N.W. 326 (1927) the Minnesota Supreme Court more or less equated the exemption granted by "church property" to the exemption allowed educational institutions in *State v. Carleton College*, 154 Minn. 280, 191 N.W. 400 (1923). In *State v. Union Congregational Church, supra*, the Court said:

> No hard and fast rule can properly be laid down to govern all cases. Generally speaking, it may be said that the rule governing exemption from taxation as to the real property of educational institutions is that all property reasonably necessary for *and primarily used and devoted to the proper purposes of the institution* . . . is exempt from taxation. 173 Minn. 44, 216 N.W. 328. (Emphasis Added)

In the case of *Christian Business Men's Committee of Minneapolis, Inc. v. State*, 228 Minn. 549, 554, 38 N.W. 2d 803, 808 (1949), the Minnesota Supreme Court said:

> In order for any institution to qualify for tax exemption under Minn. Const. Art. 9, Sec. 1—and M.S.A. 272.02 enacted pursuant thereto—there must be a concurrence of *ownership* of the property by an institution of the type prescribed by the constitution and a *use* of the property for the purpose for which such institution was organized.

The burden of proof is on the petitioner and in this case we find the petitioner has failed to prove three essential elements. First, there is insufficient proof that the property is owned by petitioner. Second, there is insufficient proof that the property is being used primarily for the furtherance of religious worship and instruction. Third, there is insufficient proof that the petitioner has any regular members or congregation other than Bishop Page and his wife.

Let us examine in greater detail the ownership and use of the property at 15817 Valley View Road remembering the familiar maxim in tax law that substance controls

over form. *Midwest Federal Savings and Loan Ass'n v. Commissioner of Revenue*, 259 N.W.2d 596, 599 (1977). *Transport Leasing Corp. v. State*, 294 Minn. 134, 199 N.W.2d 817 (1972).

First, is this property owned by a relgious association or church? The present record owners of the property are Douglas A. Page and Caroline Page as joint trustees for the Basic Bible Church of America, Chapter 8035. Prior to May 1978 when Bishop Page received his "Ordination Certificate" and a "Charter" was issued to Chapter 8035, Basic Bible Church of America, the property was being purchased under a contract for deed by Douglas A. Page and Caroline Page as joint tenants. On July 21, 1978 the vendees' interest was transferred by quit claim deed from Douglas A. Page and his wife to Dougles A. Page and Caroline Page as joint trustees for Basic Bible Church of America, Chapter 8035. There is no evidence that this conveyance put ownership of the property beyond the personal control of Douglas A. Page. On the contrary, under the By-Laws of Chapter 8035 he remains in sole control. Article III of the By-Laws designate him as "Head of this Order" and goes on to say, "The Head of this Chapter shall be for life unless otherwise agreed to." Article IV of the By-Laws flatly states:

> Article IV *Members.* The *sole authority of this Chapter of this Order shall be vested in the Head* of this Chapter. *All other members* of this Chapter shall be advisory trustees or nominee Heads of the Order, whom the Head of the Order shall listen to for advice, but they *shall have no right to vote* unless so designated otherwise by the Head of this Order. (Emphasis Added)

A trustee acts in a fiduciary capacity—not for his personal benefit. In this case the quit claim deed indicates the beneficiary of the trust is Basic Bible Church of America, Chapter 8035. What is this? Is it a non-profit corporation? A religious association? A church congregation?

It appears to be none of these. No attempt has been made to qualify this church under either Chapter 315, Minnesota Statutes, the usual statute used for organizing a new church or under Chapter 317, the Non-Profit Corporations Act.

The ownership of the property, therefore is in the name of two people, as trustees, under a non-existent trust agreement for the benefit of a "church" that has no legal status. All Douglas and Caroline Page would have to do to put the property back in their individual names would be to execute another quit claim deed. There is no independent third party who would or could complain.

The very first and fundamental requirement that the property be owned by the party seeking the exemption is not met in this case. *State v. United Church Homes, Inc.*, 292 Minn. 323, 195 N.W.2d 411 (1972).

Even if the property were actually owned by the petitioner, Basic Bible Church of America, Chapter 8035, and it were properly incorporated there is insufficient proof that Chapter 8035 is any kind of a religious association or church congregation within the normal definitions and understanding of those words. As the trier of fact this Court finds that no congregation actually exists and uses the subject property on any regular basis as its meeting place or house of worship. It continues to be used primarily, if not exclusively, as the residence and business office of Bishop Page and his family.

Although Bishop Page testified at one point that his congregation might have as many as 50 members he said that membership depended upon what a person's intentions and motivations are in expressing an interest in his church. No membership records exist, and he declined to give the names of any members or names of anyone who attends his Friday evening services. Church attendance, outside his wife and children, he testified, varies from no one in the winter to one or more in the summer. (He testified that no one attended the two weekly services held immediately prior to the trial.) No member of his "congregation" was called as a corroborating witness.

Bishop Page acknowledged that he had never officiated at a baptism or a marriage. His church apparently has no religious education or youth programs, and apparently undertakes no charitable or service efforts. No attempt has been made to comply with the City of Eden Prairie's zoning ordinance regarding churches which has special requirements for off-street parking and city approval of plans and specifications for church buildings.

The religious beliefs advanced by the Basic Bible Church, Chapter 8035 will not be discussed here because petitioner has failed to meet its burden of proof on the threshold issues of ownership and use of the subject property and its existence either as a legally organized religious association or as a de facto religious or church congregation. Some discussion of what constitutes "religion" is found in *Missouri Church of Scientology v. State Tax Commission*, 560 S.W.2d 837 (Mo) (1977) and *Ideal Life Church of Lake Elmo v. County of Washington*, Minn. Tax Court decision December 6, 1979.

There is a final constitutional issue raised by peti-

tioner that deserves comment. Bishop Page mistakenly equates his First Amendment rights of freedom of religion under the U.S. Constitution with the right to a tax exemption on his homestead. The freedoms quaranteed by the First Amendment are extended to him as an individual and prevent the government from unjustifiably interferring with his religious beliefs and practices. The First Amendment does not guarantee him any tax benefits. The property tax exemption under consideration is not extended to individuals but to churches. The petitioner must prove the existance of a group of people associated together for common religious purposes. Here is where the confusion apparently arises. Under the theories advanced by Bishop Page, he and the church are one.

In the post-trial memorandum submitted to the Court petitioner argues as follows:

> In addition to the substantial compliance with the statute, (Chapt. 315) so far as permitted by the doctrine of the church, *the property is owned by the church to the extent that it is owned by the ministers.* The Articles of Incorporation, Article XII (amended), Section 1, so states. The Appostle's Decree likewise states that *Dogulas A. Page is ordained and established personally,* in body and mind. and has been, commencing at the time he was called into the ministry, *an auxillary church in his whole person* and spirit together with the members of his flock.
>
> This is consistent with the scripture and contempory theology. Jesus was an entity unto himself who had no church building nor, initially, a congregation,

and who established his church in a man ". . . thou art Peter and upon this rock I will build my church. . ." Matthew 16:13.

* * *

The Catholic encyclopedia defines "rock" as "a symbol of impregnable safety and protection," and defines "church" as, inter alia, both a place of Christian worship and those who are of the clerical state and whose lives are devoted to the service of the church. *Thus, the "rock", Peter, was Christ's church: likewise, the owners of this property are a Church.* (Emphasis added)

We do not pretend to decide whether Bishop and Mrs. Page come within any theological definition of a church. We reject, however, their contention that they, as individuals, come within the meaning of the word "church" as found in Minn. Stat. 272.02, Subd. 1(5) or Minnesota Constitution. Article X, Section 1.

To hold otherwise would allow any person to declare himself to be a "church" and thereupon become a tax exempt institution. All property owned and used by him would instantaneously become exempt from property taxes and shift the cost of local government and public schools onto persons less ingenious than Archbishop Daly and his disciples and also onto those who continue their membership in more traditional churches.

For the reasons stated the applicant's claim for property tax exemption is denied.

E.B.G.

EARL B. GUSTAFSON, Court Administrator of the Tax Court, State of Minnesota, does hereby certify that the

attached instrument is a true and correct copy of the original on file and of record in my office.

Dated this 21st day of April, 1980.

/s/ B. W. Guinness,
Deputy Clerk

Docket No. Tc-0649

STATE OF MINNESOTA
IN SUPREME COURT

Douglas A. Page and Carolyn Page, Trustees of the Basic Bible Church of America, Chapter 8035,

Relators,

51660 vs.

County of Hennepin,

Respondent.

Oberg & Mannikko
2500 North Central Avenue
Wayzata, Minnesota 55391
Thomas L. Johnson, County Att.
Donald J. Lalor, Assistant
A-20 Government Center, Mpls.

Considered and decided by the court en banc without oral argument.

ORDER

Based upon all the files, records, and proceedings, herein,

IT IS HEREBY ORDERED that the judgment of the Tax Court entered August 22, 1980, be, and the same is

hereby summarily affirmed pursuant to Rule 136.01(2), Rules of Civil Appellate Procedure.

Dated: 6/13/81

BY THE COURT:

/s/ ROBERT J. SHERAN
Chief Justice

Supreme Court filed June 3, 1981.
John McCarthy, Clerk

---

[119] Q. You had members but there was no way of identifying them? A. I said that there was no way of saying who felt that they were a member. I said that I thought that I had somewhere around 50 members.

Q. Could I have their names please? A. No. You may not.

Q. Why not? A. Well, sir, it's been my observation through my dealing with the State over these matters that there seems to be a concerted effort to apply those to members of the Basic Bible Church in one form or another. And providing you with a list of memberships would provide you with a harassment list.

Q. You are testifying, sir, that you have 50 members and yet you are unwilling to tell me who those members are? A. I am going to object to answering who the —

THE COURT: Do you have a membership list?

THE WITNESS. I have no membership list, Your Honor.

THE COURT: Do you have any roster or list of members?

MR. MANNIKKO: Your Honor, if I may. We will object to that question on the grounds that the individuals who are members of this church are not [120] parties to this suit in any respect because of their religion and have no expectation that their names would be handed out as part of a membership list to anyone. There is no requirement, as I understand it, in the law—There is no basis in fact or law, and that is irrelevant for the purposes of this hearing to determine who or what the names of the members of this church are.

THE COURT: That might be, but we are trying to test the testimony that there are members, and it's a little conflicting at this point because on one hand the witness says there may be as many as 50 members and yet he has no membership list.

THE WITNESS: I keep no list.

THE COURT: Or keeps no list, so there is no way of either you or the Court knowing who the members are.

THE WITNESS: That's correct.

THE COURT: Is it possible that there are no members other than your wife and the other trustees?

THE WITNESS: No.

THE COURT: That's not possible?

THE WITNESS: Well, from the theoretical standpoint I suppose it would be, but from my own personal knowledge, that's not true.

[121] THE COURT: And yet you are unwilling to name or to give us the names of any of the members?

THE WITNESS: I would be unwilling to do that from the standpoint that they would use them for harassment by the State Department of Revenue and I would have to ask their permission, which I did of one individual who

didn't mind their name being used. And we tried to introduce a letter from that person, but that letter was excluded.

THE COURT: Well, that letter was excluded on certain—because of certain rules of evidence requiring authentication.

THE WITNESS: I understand that.

THE COURT: And if you had some people from your church come in here and say: "Yes, I have attended the church, I am a member of the church," that would certainly bolster this case in which you have the burden of proof.

THE WITNESS: I can understand that.

THE COURT: And at this point, you are telling the Court that I have a church of up to 50 members, but I don't have a list and I won't tell you who they are. So I guess the risk is on you as the petitioner if you want to leave the evidence in that form.

[122] MR. MANNIKKO: I think that the primary concern is to protect the members of his church and to respect their basic rights. I don't think we have any objection to it personally, to giving the list to the Court only, to giving the list to the Court only, and if Mr.—

THE COURT: I don't think that this list, a church membership list, would be under any kind of a privilege that I'm aware of. But you can proceed. And as the record now stands, you have no list of members and you are unwilling to give us the names of any members?

THE WITNESS: We will have to stand on that record.

MR. MANNIKKO: But you do claim that there are 50 members?

THE COURT: There could be 50 members, depending upon how they felt about their membership?

THE WITNESS: It depends upon how they feel about their membership.

Opposition

Office - Supreme Court, U.S.
FILED
NOV 3 1981
ALEXANDER L. STEVAS
CLERK

No. 81-438

IN THE

Supreme Court of the United States

October Term, 1981

BASIC BIBLE CHURCH OF AMERICA,
CHAPTER 8035,

Petitioner,

v.

COUNTY OF HENNEPIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION

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224-7633 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7633

QUESTIONS PRESENTED

Whether the Minnesota Tax Court erred in determining that Petitioner's trustee's place of residence was not entitled to real estate tax exemption.

Whether this Court will review questions not fully presented below either in the record or in the decision.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION

LACK OF JURISDICTION

Respondent respectfully submits that the Court lacks jurisdiction to review the judgment of the Minnesota Supreme Court affirming the decision of the Minnesota Tax Court. Although Petitioner asserts this Court has jurisdiction under 28 USC 1257(3), in fact no treaty or statute of the United States is drawn in question nor is the validity of any state statute drawn in question. The decision below is based strictly on an interpretation of Minnesota state law and Petitioner has been deprived of no title, right, privilege or immunity guaranteed by the Constitution, treaties or statute of the United States.

STATEMENT OF THE CASE

Prior to becoming members of and establishing their own chapter of the Basic Bible Church of America, Douglas A. Page and Carolyn Page purchased and occupied a single family residence in the City of Eden Prairie, County of Hennepin, State of Minnesota. Subsequent to that purchase, Douglas Page was ordained a Bishop in The Basic Bible Church by Pope Jerome Daly[1] and also became a member of the Order of Almighty God.

In July of 1978, Mr. and Mrs. Page executed a Quit Claim Deed conveying their single family residence to themselves, as joint trustees, with right of survivorship, for Basic Bible Church of America, Ch. 8035. On or about the same time as

---

[1] Pope Jerome Daly, at one time a member of the Minnesota State Bar, was disbarred by the Minnesota Supreme Court in 1971. Most recently, Pope Daly was sentenced to four years in prison by U. S. District Judge Harry MacLaughlin for bringing 361 pounds of marijuana to Minnesota to sell.

this purported transfer of ownership took place, the newly-ordained Reverend Page made application for exemption from Minnesota state real estate taxation for his residence. This application was reviewed and investigated by the City Assessor of Eden Prairie and subsequently denied by the Hennepin County Assessor's office, the assessment reviewal agency for all municipalities in Hennepin County.

The Basic Bible Church then filed an appeal from this determination pursuant to the provisions of Minn. Stat., Ch. 278. The Minnesota Tax Court, after a full trial at which Reverend Page testified, and after a view of the property itself, in April of 1980, upheld the Hennepin County Assessor's determination that the property should not be exempted. Its Findings, along with its thoughtful memorandum, were affirmed by the Minnesota Supreme Court in June of 1981.

REASONS WHY THE WRIT OF CERTIORARI SHOULD BE DENIED

1. PETITIONER DOES NOT OWN THE RESIDENCE FOR WHICH IT SEEKS REAL PROPERTY TAX EXEMPTION.

The question of whether real property is entitled to exemption from a state-established, county-administered real estate taxation system is one exclusively of state law. *Cherokee State Bank of St. Paul v. Wallace*, 202 Minn. 582, 279 N.W. 410 (1938). In determining exemption status, the Minnesota Supreme Court has developed, and consistently upheld, a two-part test which focuses on ownership and use of the property.

> In order for any institution to qualify for tax exemption under Minn. Const. Art. 9 [now Article 10], Sec. 1 and M.S.A. 272.02 enacted pursuant thereto—there must be a concurrence of *ownership* of the property by an institution of the type prescribed by the constitution and a *use* of the property for the purpose of which such institution was organized. *Christian Business Men's Committee of Minneapolis, Inc. v. State*, 228 Minn. 549, 554, 38 N.W.2d 803, 808 (1949); See also *Ideal Life Church of Lake Elmo v. Co. of Wash.*, 304 N.W.2d 308 (Minn. 1981); see also 56 Minn. L.Rev. 1121, 1134 (1972).[2]

The Minnesota Tax Court properly applied the above-cited test in its determination that Petitioner is not entitled to a

---

[2] "The early classifications of property in Minnesota were indeed based on the use made of the property or in the nature of the property . . . However with the passage of the 1933 law, and continuing to the present time, it can be shown that Minnesota in effect has shifted to a dual system which has both classes of property and classes of owners or occupants."

property tax exemption. As one of its Findings of Fact, the Tax Court determined that "the subject property is not owned by petitioner", (Finding No. 5, Petition A-2). Because Petitioner did not satisfy the first part of the test which requires ownership by an institution, the Tax Court correctly concluded that "The subject property is not owned by a church." Thus, on the basis of this factual finding and the resulting conclusion that church ownership was not proven, the Tax Court was correct in further concluding that the subject property was not entitled to exemption from real estate taxation under either the Minnesota Constitution or Minn. Stat. §272.02, Subd. 1(5) (Petition p. 2). Therefore, denial of Petitioner's application for an exempt status should be affirmed.

Moreover, this Court should also note that the issues presented to and the determinations made by the Tax Court were done in accordance with and under the provisions of the Minnesota Constitution and Minnesota state law. There was no Federal law or U.S. Constitution provision involved.

Petitioner's assertion in its writ application that the Minnesota Court's denial of a real estate tax exemption created by and based on Minnesota state law is in conflict with a Federal Court of Appeal's decision on a federal question is untenable. In constructing its argument in an attempt to rely on the *Baldwin* case (Petition p. 8), Petitioner's reasoning must deliberately ignore the *threshold issue of ownership* focused on by the Court, and to find instead some supposed First Amendment infringement in the Court's statement in its Memorandum of Law that "No membership records exist, and he (petitioner's-trustee) declined to give the names of any members or names of anyone who attends his Friday evening services" (Petition, A-10). Such an approach misleads this

Court because *this statement deals* solely *with* the *use* of the property.

As the full record discloses, the Minnesota Court's holding denying exemption was based first and foremost on Petitioner's failure to meet the Minnesota Supreme Court test of *ownership*. In its memorandum, the Court clearly stated: "The very first and fundamental requirement that the property be owned by the party seeking the exemption is not met in this case. *State v. United Church Homes, Inc.*, 292 Minn. 323, 195 N.W.2d 411 (1972)." (Petition A-9). To be sure, the Minnesota Court made a factual finding that the subject property was not used primarily for religious or church purposes (Finding No. 6, Petition A-2). Furthermore, it is clear from the Court's prefatory language stating, "Even if the property were actually owned by the petitioner . . . and it were properly incorporated . . ." that the Court was making this finding in addition to its initial dispositive finding of non-ownership (Petition A-9). Additionally, even if this second issue relative to *use* of the property were the single dispositive issue to be dealt with by this Court, it is clear that Petitioner's trustee's failure to give the names of any of the church's members or even anyone who attended Friday evening services was only one of the facts relied upon by the Court in arriving at its determination that there was insufficient proof that Chapter 8035 of the Basic Bible Church was any kind of a religious organization or church or that the property was used for anything more than as a residence for Petitioner's trustee and his family (Petition A-9).

As mentioned above, the Court's focus on the *issue of use is independent of* and secondary to the Court's emphasis on *the issue of ownership*. Quite simply put, the Court found that the Basic Bible Church was not the owner of the property and

since Minnesota law requires concurrent ownership and use, failure to meet the ownership requirement alone was sufficient to uphold the denial of the exemption.

2. THERE IS NO CONSTITUTIONAL RIGHT TO HAVE ONE'S HOME GRANTED A REAL ESTATE TAX EXEMPTION SIMPLY BECAUSE ONE WORSHIPS IN IT.

Petitioner also claims in its application (Petition, p. 9) that the Minnesota Tax Court decision conflicts with a decision of this Court on a matter of Federal law. The Federal question Petitioner now seeks to have this Court answer arises out of this Court's decision in *Walz v. Tax Commissioner*, 397 U.S. 664 (1970), (Petition, p. 10). Petitioner's trustee claims his First Amendment rights are violated by the denial of his request for a tax exemption on behalf of his church.

The Tax Court in its Memorandum dealt sensibly and forthrightly with this claim based on First Amendment rights (Petition A-10, 11). That Court observed:

> There is a final constitutional issue raised by petitioner that deserves comment. Bishop Page mistakenly equates his First Amendment rights of freedom of religion under the U.S. Constitution with the right to a tax exemption on his homestead. The freedoms guaranteed by the First Amendment are extended to him as an individual and prevent the government from unjustifiably interferring [sic] with his religious beliefs and practices. The First Amendment does not guarantee him any tax benefits. The property tax exemption under consideration is not extended to individuals but to churches. The petitioner must prove the existance [sic] of a group of people associated

> together for common religious purposes. Here is where the confusion apparently arises. Under the theories advanced by Bishop Page, he and the church are one.

Again, as discussed above, the First Amendment element of Petitioner's *argument goes to* the *use* of the property and *ignores the element of ownership.* In reviewing Petitioner's compliance with this second part of the Minnesota Supreme Court's test for granting exemptions, the Tax Court concluded that Petitioner's trustees, Bishop Page and his wife, did not, as individuals, come within the meaning of the word "church" as found in Minn. Stat. §272.02, Subd. 1(5) or Minnesota Constitution, Article X, Section 1 (Petition A-12).

Then, addressing itself to what it no doubt perceived to be the practical aspects of Petitioner's claim, the Court said:

> To hold otherwise would allow any person to declare himself to be a "church" and thereupon become a tax exempt institution. All property owned and used by him would instantaneously become exempt from property taxes and shift the cost of local government and public schools onto persons less ingenious than Archbishop Daly and his disciples and also onto those who confine their membership in more traditional churches (Petition A-12).

The Court's analysis and approach are based solely on Minnesota law. Petitioner attempts to manufacture a Federal question by taking a portion of the Tax Court holding out of context and thereby seeks to create a First Amendment violation. As the Tax Court clearly perceived, there is none.

3. NEITHER THE DECISION BELOW NOR THE RECORD ITSELF FAIRLY RAISES EITHER OF THE QUESTIONS PRESENTED IN THE PETITION.

In its initial pleadings and memorandum to the Tax Court, Petitioner addressed itself to the following issues:

> (1) the Constitution of the State of Minnesota . . . exempts from the state's power to tax all property belonging to churches.
>
> (2) Minn. Stat. 272.02 Subd. 1(5) exempts church property.
>
> (3) State law requires that there must be a concurrence of ownership of the property by a church as well as a use of the property for the purpose for which such institution was organized.

There is no mention in that memorandum of either of the two QUESTIONS PRESENTED in Petitioner's Writ application.

The County's post-trial memorandum to the Tax Court addressed the same issues and concluded that the property was not owned by a church but rather by Petitioner's trustee and his wife. In its reply memorandum mailed on March 12, 1980, Petitioner claimed that a "bona fide First Amendment issue has been joined." However, in support of this allegation, Petitioner cited cases dealing with factual situations completely different than the one before the Court. Since there was no testimony at trial, nor indeed even any allegation, that Petitioner's trustee's freedom to practice the religion of his choice had been denied, curtailed or infringed upon, this allegation that a First Amendment issue had been raised cannot be said to rise to the level of a bona fide issue.

In its April 21, 1980, Finding, Conclusion, Order and Memorandum (Petition A-1 through A-13), the Minnesota Tax Court dealt exhaustively and concisely with the issues fairly raised by the pleadings, the trial and the post-trial memoranda. As discussed, *supra*, in Section 2 (pp. 7-8), the Tax Court did address Petitioner's First Amendment claim and carefully explained the error Petitioner made in equating his First Amendment rights of freedom of religion under the U.S. Constitution with the right to a tax exemption on his homestead (Petition A-10, A-11). Such an attempt to imbue a tax exemption case with First Amendment constitutional dimensions cannot be seriously considered as fairly raising the two questions presented by Petitioner before the Trial Court.

In its appeal to the Minnesota Supreme Court, Petitioner, on page 4 of its appeal brief, framed the legal issues on review thusly:

> LEGAL ISSUES
>
> I. Is the subject property exempt from taxation pursuant to Minn. Stat. 272.02 Subd. 1(5) and Article X, Sec. 1 of the Minnesota Constitution, for the reason that it is church-owned property used as a house of worship, parsonage and church office?
>
> The Trial Court held: In the negative.
>
> II. Is the Trial Court's decision arbitrary and capricious, wholly unsupported by the evidence, and erroneous as a matter of law?
>
> The Trial Court held: In the negative. (See Appendix, A-3).

Buried within its discussion of the first issue was Petitioner's bare allegation, once again, that a bona fide First Amendment issue had been joined, followed by a recitation of the same cases and holdings that were in Petitioner's Reply Memorandum to the Tax Court discussed above (p. 9). Also, as previously explained, the Tax Court did address this issue and quite clearly outlined the error in Petitioner's reasoning. In its Appendix (A-14 - A-17) to its Writ, Petitioner sets forth a portion of the transcript consisting of the cross-examination testimony of Petitioner's trustee, Mr. Page. While such testimony was elicited, it comprises a mere four pages of a 172 page transcript, and it is at best a secondary issue designed to divert the Court's attention from the substantive issues underlying the Tax Court's analysis and judgment. Presumably Petitioner has included this excerpt in an attempt to convince this Court that it had raised the membership issue below.

Given the fact that Petitioner did not reference this interchange in either its post-trial memoranda or in its appeal to the Minnesota Supreme Court, it is inappropriate for Petitioner now to rely on it in an attempt to demonstrate that the Court below committed error so that Petitioner can justify inclusion of the second of its questions presented. Aside from the fact that the question of membership was considered by the Court only as one item of evidence in its Findings as to the property's *use*, it is important that this Court keep in mind that the *use* issue is totally separate from the dispositve and threshold issue of ownership—an issue Petitioner has chosen to completely ignore in its Petition.

Furthermore, this Court has long followed the established precedent that when considering writs of *certiorari* it will not pass on issues that were not raised below. *Federal Trade Commission v. Simplicity Pattern Co., Inc.*, 79 S.Ct. 1005, 1010 end

of fn. 4 (1959); *Sonzinsky v. United States*, 57 S.Ct. 554, 556 (1937); and *New York Dock Co. v. The Poznan*, 47 S.Ct. 482, 485 (1927).

Petitioner has presented no argument which would justify this Court's departure from a rule designed to guarantee a full and complete airing of all the issues before they are presented to the U.S. Supreme Court.

CONCLUSION

For the reasons set forth above, each of which independently justifies the affirmance of the Lower Court's decision, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

No. 51660
STATE OF MINNESOTA
IN SUPREME COURT

BASIC BIBLE CHURCH OF AMERICA,
CHAPTER 8035,

Petitioner-Relator,

vs.

COUNTY OF HENNEPIN,

Respondent.

RELATOR'S BRIEF AND APPENDIX

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LEGAL ISSUES

I. Is the subject property exempt from taxation pursuant to Minn. Stat. 272.02 Subd. 1(5) and Article X, Sec. 1 of the Minnesota Constitution, for the reason that it is church-owned property used as a house of worship, parsonage and church office?

The Trial Court held: In the negative.

II. Is the Trial Court's decision arbitrary and capricious, wholly unsupported by the evidence, and erroneous as a matter of law?

The Trial Court held: In the negative.